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09/720,280	12/21/2000	Thomas Eckel	MO-6035/LEA-	1062
157 7590 01/21/2004				
BAYER POLYMERS LLC				
100 BAYER ROAD				
PITTSBURGH, PA 15205				
EXAMINER				
SZEKELY, PETER A				
ART UNIT				
FAPER NUMBER				
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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 20040112

Application Number: 09/720,280

Filing Date: December 21, 2000

Appellant(s): ECKEL ET AL

MAILED  
JAN 20 2004  
GROUP 1700

James R. Franks  
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/08/03.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 2-15, 18, 20 and 22-24 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

5,849,827	Bodiger et al.	12-1998
EP 0 728 811	Mitsubishi Chemical Corporation	8-1996

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2-15, 18, 20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsubishi Chemical Corporation EP 0 728 811, in view of Bodiger et al. 5,849,827.

Mitsubishi discloses 40-90 parts by weight of polycarbonate, 1-60 parts by weight of graft copolymer, 0-40 parts by weight of vinyl copolymer, 1-30 parts by weight of phosphazene and 0.05-1.0 parts by weight of PTFE from page 2, line 56, to page 3, line 5. On page 5, lines 15-19, other additives are listed among them other flame retardants and fillers. Bodiger et al. teach polycarbonate, extremely finely divided inorganic powder having a mean particle diameter of 0.1-100 nm and a flame retardant in claim 1. Boehmite, (hydrated alumina), is claimed in claim 8, graft copolymer in claim 16, vinyl copolymers in claim 14 and PTFE is mentioned in column 9, line 16. Flame retardants are listed from column 7, line 56, to column 9, line 12. "The invention is based on the findings that an addition of extremely finely divided inorganic powders together with flame retardants in thermoplastic polycarbonate moulding compositions produces a significant reduction in the burning times and hence a considerable improvement in the flame proofing." See column 1, lines 51-56. It would have been obvious to one having

ordinary skill in the art, at the time the invention was made, to use a filler having an extremely small particle size as the filler in the flame retardant composition of Mitsubishi Chemical Corporation.

**(11) Response to Argument**

Mitsubishi Chemical Corporation does not teach away from the use of non-phosphazene phosphorus compounds, it merely advises against replacing phosphazenes with other phosphorus containing flame retardants. Additional flame retardants are part of the invention of Mitsubishi. See page 5, lines 17-18. Furthermore, Bodiger et al. teach in column 8, lines 20-23, that the use of the finely divided inorganic filler improves the fire retarding performance of all phosphorus containing stabilizers and in column 1, lines 51-56 it is explicitly stated that the improvement occurs regardless which flame retardants are used. Applicants' "consisting essentially of" language does not exclude non-phosphazene flame retardants, since it is not proven that a blend of flame retardants would deleteriously affect the properties or use, which applicants seek in the sole use of the commonly required additive. Furthermore, in spite of applicants protestations to the opposite, the table, on page 27 of applicants' specification, clearly shows that in the presence of a finely divided filler, the flame retardant properties of the compound do not deteriorate, in spite of a 26.67% reduction in the phosphazene concentration. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
January 12, 2004

Conferees  
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